Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF THE
AD HOC TELECOMMUNICATIONS USERS COMMITTEE

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SUMMARY

Because of their potential to accelerate the convergence of disparate communications technologies and information services onto a single communications platform, the real impact of IP-enabled services and applications – and VoIP in particular – is not that they require the FCC to re-think its de-regulation of IP applications, the Internet, and information services generally. Nor do IP-enabled services and applications make regulation unnecessary in the telecommunications services market. Rather, they exacerbate existing problems in the regulatory regimes currently applicable to the telecommunications market and require the FCC to re-think the sustainability of those regimes. In particular, the "rise of IP" challenges the assumptions of the Commission's various intercarrier compensation systems and its universal service rules regarding differences in the way service providers use networks and the revenue streams associated with different services.

Accordingly, the Commission should resist arguments that the deployment of IP-enabled services, particularly voice over IP ("VoIP"), requires some precipitous abandonment of the Commission's long-standing de-regulatory approach to IP services. Instead, the Commission should respond to the technological and marketplace changes resulting from the introduction of IP-enabled services by re-affirming crucial aspects of that approach. Thus, the Commission should affirm that IP-enabled applications deployed over private enterprise networks are not subject to (nor do they subject the end-users of the services to) the jurisdiction of the Commission, any more than traditional voice and data applications on private enterprise networks do so today. The

Commission should also affirm the continuing vitality of its existing standards and precedent for interpreting and applying the Act's definitions of "telecommunications" and "information services." The Commission should continue to use that analytical model to determine whether a particular IP-enabled service or application constitutes a regulatable "telecommunications" service or an unregulated "information service."

Finally, the Commission should seize the opportunity presented by the proliferation of IP-enabled services to address the fundamental shortcomings in the current intercarrier compensation and USF funding regimes. Like any other service or application that is dependent upon basic telecommunications infrastructure, IP-enabled services require the Commission's rules to accurately reflect the competitive realities of the telecommunications marketplace, which include the absence of sufficient competition to discipline pricing and carrier practices in the exchange and exchange access markets. Therefore, the Commission should complete expeditiously its rulemaking proceedings to reform current intercarrier compensation mechanisms and universal service funding methodologies and adopt the pro-competitive reform proposals advocated by Ad Hoc in those dockets.

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The Ad Hoc Telecommunications Users Committee ("Ad Hoc" or "the Committee") hereby submits its comments in response to the Commission's March 10, 2004 *Notice of Proposed Rulemaking* ("*Notice*" or "*NPRM*") in the above-captioned proceeding.[1] As described in greater detail below, the Commission should resist arguments that the deployment of IP-enabled services, particularly voice over IP ("VoIP"), requires some precipitous abandonment of the Commission's long-standing de-regulatory approach to IP services. Instead, the Commission should respond to the technological and marketplace changes prompted by the introduction of IP-enabled services by re-affirming certain aspects of its current regulatory regime, namely, the unregulated status of IP-enabled applications deployed by enterprise customers on their

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[1] *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28 (rel. Mar. 10, 2004) *("Notice*" or "*NPRM")*.

private line networks and the continuing vitality of its standards for applying the Act's definitions for "telecommunications" and "information services." In addition, the Commission should complete expeditiously its rulemaking proceedings to reform current intercarrier compensation mechanisms and universal service funding methodologies.

I. THE COMMISSION SHOULD NOT REGULATE IP-ENABLED APPLICATIONS DEPLOYED BY ENTERPRISE CUSTOMERS VIA PRIVATE LINE SERVICES

The Commission should clarify that it is not proposing to disturb the statutory and regulatory *status quo* with respect to end user control of the content transmitted over the end user's private line services.

The *Notice* states that "the scope of this proceeding—and the term 'IP-enabled services,' … includes services *and applications* relying on the Internet Protocol family."[2] That statement suggests an expansive view of the Commission's authority and jurisdiction. Specifically, it could be interpreted to mean that the Commission is claiming authority to (a) regulate any applications that employ IP technology, including those resident on CPE selected, installed, and controlled by end users in order to generate or format traffic sent between end user premises using private line services obtained from common carriers; and (b) regulate non-carrier end-users who use such IP-enabled applications in conjunction with private line services to generate VoIP or customized data for transmission by the underlying private line service provider. As a matter of law and Commission precedent, however, that interpretation would be impermissible.

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[2] *NPRM* at ¶ 1, n.1 (emphasis added).

Under the Communications Act of 1934, as amended (the "Act"),[3] the Commission has jurisdiction to enforce the provisions of the Act, which impose duties on common carriers and, in the case of Section 254, on certain providers of "telecommunications." When a customer of carrier-provided private line services installs an IP-enabled application – such as the customer premises equipment ("CPE"), including hardware and software, required to convert analog voice signals into VoIP packets for transmission over a private line network – the customer acquires the capability to generate information of the customer's choosing (*i.e.,* voice signals) for transmission over a private line circuit. An enterprise customer's installation and use of CPE does not constitute the provision of *transmission* service, however. IP-enabled software applications are indisputably CPE; the Commission has previously held that software installed on CPE is, itself, part of the CPE.[4] The transmission service is instead provided by the underlying service provider who typically is a common carrier subject to Commission jurisdiction under Title II. Thus, ownership and operation of an IP-enabled application that generates the signals carried over a private line circuit does not constitute "telecommunications" as that term is defined in Section 3(43) of the Act,[5] and the enterprise customer who installs that application does not become a provider of "telecommunications" subject to the FCC's Title II jurisdiction.[6]

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[3] 47 U.S.C. § 151 *et seq.*

[4] *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities,* WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6453, at ¶ 85 (1999).

[5] 47 U.S.C. § 3(43) ("The term 'telecommunications' means the *transmission,* between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received") (emphasis added).

[6] *See Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither*

Furthermore, an IP-enabled application deployed by an enterprise customer on its private line network does not constitute a "telecommunications service" as defined in Section 3(46) the Act, even if it provides a transmission function, because the application is not offered for a fee directly to the public.[7]

Thus, the installation and use of IP-enabled applications on an end user's private line network does not transform the enterprise customer into a provider of "telecommunications" or "telecommunications service" subject to the Commission's Title I or Title II jurisdiction.

Customer-installed VoIP applications transmitted via carrier-provided private line services in no way undermine existing intercarrier compensation schemes or the support mechanisms currently in place to fund the Universal Service Fund ("USF"). Whether end users transmit traditional voice or VoIP signals over their private line networks, they nevertheless pay all applicable local exchange and exchange access charges, and contribute to USF support mechanisms, when they purchase the underlying private line circuits from common carriers.

If end user migration from traditional telecommunications services to IP-enabled applications threatens the viability of current intercarrier compensation and USF funding mechanisms, the Commission should address that issue as part of its existing

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Telecommunications Nor a Telecommunications Service, Memorandum Opinion and Order, WC Docket 03-45, FCC 04-27 (Feb. 19, 2004) ("*Pulver Order*"). In the *Pulver Order,* the Commission determined that the "service" provided by Pulver was not "telecommunications," noting that "Pulver neither offers nor provides *transmission* to its members. *Id.* at ¶ 9 (emphasis added). The Commission noted that, under the Act, the "heart of 'telecommunications' is transmission." *Id.* Similarly, the operation of CPE by end users does not constitute "transmission."

[7] 47 U.S.C. § 3(46). As the Commission noted in the *NPRM,* the definition of "'telecommunications service' was intended to clarify that telecommunications services are "common carrier services." *NPRM* at ¶ 26, *citing Cable & Wireless, PLC,* Order, 12 FCC Rcd 8516, 8521, ¶ 13 (1997); *Virgin Islands Tel. Corp. v. FCC,* 198 F.3d 921, 926-27 (D.C. Cir. 1999).

rulemaking proceedings to reform those mechanisms. As discussed in Section III, *infra*, certain regulatory reform proposals supported by Ad Hoc and others in those dockets would not only correct deficiencies in the intercarrier compensation and USF mechanisms when applied to traditional services and communications technologies but have the added benefit of doing so even in a telecommunications world dominated by IP-enabled applications and services, mooting much of the regulatory controversy associated with the proliferation of such applications.

II. THE COMMISSION SHOULD RETAIN ITS EXISTING FRAMEWORK FOR DIFFERENTIATING BETWEEN UNREGULATED INFORMATION SERVICES AND REGULATED TELECOMMUNICATIONS

As the *NPRM* points out, the Commission's consideration of issues surrounding IP-enabled services takes place within an existing legal framework of statutory provisions, judicial precedent, and prior Commission orders.[8] The Commission has specifically sought comment regarding how, if at all, it should differentiate between various IP-enabled services and whether its existing regulatory framework should apply to all of them.[9]

Ad Hoc urges the Commission to retain the standards and criteria in its existing rules, as interpreted by the courts and the Commission in prior decisions, for determining whether a particular IP-enabled service is an unregulated "information service" or a regulatable "telecommunications service." This existing body of regulation and precedent provides robust, flexible, and well-developed criteria for differentiating

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8 *NPRM* at ¶ 23.

9 *Id.* at ¶ 36.

between the two types of services.[10] The Commission should not abandon or even materially modify its existing criteria for categorizing services in accordance with the definitions in the Act.

By preserving and adhering to this body of decisions, the Commission can provide regulatory stability and predictability for both potential providers and end-users of IP-enabled services. End-users of telecommunications and information services will be able to make capital investments in information technologies and plan their procurement of communications services with a reasonable degree of certainty that the technological and economic underpinnings of their decisions will not subsequently be disrupted by a sudden shift in the Commission's regulatory classification, using new and untested criteria, of IP-enabled services. The Commission has previously recognized that regulatory stability is a compelling reason to preserve its precedent with respect to the classification of services as information services. In the First Report and Order and Further Notice of Proposed Rulemaking in the *Non-Accounting Safeguards Rulemaking*,[11] the Commission determined that services classified as "enhanced

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[10] *See, e.g., Howard v. America Online,* 208 F.3d 741, 752-53 (9th Cir. 2000) (AOL's services constitute "enhanced services" not subject to the FCC's Title II common carrier jurisdiction), *cert. denied,* 531 U.S. 828 (2000); *U S West Communications, Inc. Petition for Computer III Waiver; BellSouth Petition for Waiver of Computer III Rules for Reverse Search Capability; Southwestern Bell Telephone Company Petition for Waiver of Computer III Rules for Reverse Search Capability,* CC Docket No. 90-623, Memorandum Opinion and Order on Reconsideration, 11 FCC Rcd 7997, 8006, at ¶ 22 (1996) (US West "reverse-search capability" is "enhanced service" because it provided additional information to the subscriber and involved subscriber interaction with stored information); *Independent Data Communications Mfrs. Inc. and AT&T Co., Petition for Declaratory Ruling that All IXCs be Subject to the Commission's Decision on the IDCMA Petition,* Memorandum Opinion and Order, DA 95-2190, 10 FCC Rcd 13717, 13721-22, at ¶¶ 30-34 (1995) (AT&T's InterSpan Frame Relay Service is "basic service" because it provides a transmission capability that does not modify customer data from origination to termination).

[11] *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* CC Docket No. 96-149**,** First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21,905 (1996) (*"Non-Accounting Safeguards First Report and Order*").

services" pursuant to the regulations and decisions of the Commission predating the 1996 revisions to the Communications Act would be considered "information services" as defined by the 1996 revisions to the Act. Specifically, and of particular relevance here, the Commission noted the following:

> We believe that interpreting 'information services' to include all 'enhanced services' provides a measure of regulatory stability for telecommunications carriers and ISPs alike, by preserving the definitional scheme under which the Commission exempted certain services from Title II regulation. We agree with ISPs that regulatory certainty and continuity benefits both large and small service providers.[12]

For the same reasons, the Commission should provide continuity and stability with respect to the analysis and standards it will use to determine the regulatory treatment of IP-enabled services.

Using these standards, the Commission should continue to make case-by-case, factually-driven determinations of the appropriate regulatory classification for individual IP-enabled services. The Commission's recent decisions in both the *AT&T Phone-to-Phone Order*[13] and *Pulver Order*[14] demonstrate the continued vitality of the Commission's existing analytical models and statutory interpretations for determining whether certain types of IP-enabled services constitute "telecommunications services" or "information services" under the Act. Those decisions also reinforced the stability and predictability of the Commission's decision-making process. As a result, carriers

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12 *Id.* at 21,956, ¶ 102.

13 *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* Order, WC Docket No. 02-361, FCC 04-97 (Apr. 21, 2004) ("*AT&T Phone-to-Phone Order*").

14 *See Pulver Order*, *supra,* note 6.

and information service providers are better able to make informed decisions regarding the configuration of their services and the regulatory costs and consequences of providing IP-enabled services in a particular manner. By reducing regulatory uncertainty, the Commission can stimulate, or at least avoid discouraging, the development of innovative applications and new technologies that use traditional telecommunications services as an integral component. The Commission should, therefore, continue to evaluate the regulatory issues raised by particular IP-enabled services on a case-by-case basis in accordance with established precedent and should not disturb the fundamental principles by which it has interpreted and applied the statute's definitions to date.

III. THE COMMISSION'S RULES SHOULD REFLECT THE NATURE AND COST OF THE FACILITIES USED TO DELIVER TELECOMMUNICATIONS SERVICES, NOT DIFFERENCES AMONG CUSTOMERS OF SUCH SERVICES, THE APPLICATIONS THEY USE, OR THE CONTENT THEY TRANSMIT

The *NPRM* acknowledges the difference between IP-enabled applications and services, and the broadband (and even narrowband) facilities over which those services are provided.[15] That distinction is crucial if the Commission is to develop appropriate regulatory responses to the "rise of IP."[16] When the *Notice* asks whether the proliferation of IP services and applications "may permit competitive developments in the marketplace to play the key role once played by regulation,"[17] it begs an important question: which marketplace can obviate the need for regulation if it is competitive?

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15 *NPRM at* ¶¶ 2-3, nn. 2 & 3.

16 *Id.* at ¶ 4.

17 *Id.*

The correct answer is the basic telecommunications services market. No matter how competitive the market may be for the services and equipment (including software) required to obtain or provide IP-enabled applications and services, customers and service providers must still use basic transmission facilities and telecommunications services to access those applications and services. Pulver.com customers must still purchase broadband connections to access pulver.com's VoIP offering. And absent competition in the provision of those basic telecommunications services, customers (and providers) of IP-enabled services and applications will need regulatory protections against any unreasonable prices, discriminatory practices, or other anti-competitive behavior by providers with market power in the telecommunications services market.

Because of their potential to accelerate the convergence of disparate communications technologies and information services onto a single communications platform, the real impact of IP-enabled services – and VoIP in particular – is not that they require the FCC to re-think its de-regulation of IP applications and information services. Nor do they make regulation unnecessary in the telecommunications services market. Rather, they exacerbate existing problems in the regulatory regimes currently applicable to the telecommunications market and require the FCC to re-think the sustainability of those regimes. In particular, the "rise of IP" challenges the assumptions of the Commission's various intercarrier compensation systems and its universal service rules regarding differences in the way providers use networks and the size of the revenue streams associated with various services.

For the reasons discussed in greater detail below, the deployment of IP-enabled services and applications makes it even more imperative for the Commission to

implement the intercarrier compensation and universal service reforms urged by commenters in the pending rulemakings addressing those issues. The Commission must continue its progress towards a more economically efficient system of explicit subsidies focused on the facilities used to deliver services and the actual cost of providing and maintaining them, rather than on the type of application transmitted over such facilities or the nature of the customer taking service. By eliminating disparate treatment of customers and services, based on factors that have nothing to do with the costs of providing the underlying service, the Commission can eliminate opportunities for uneconomic arbitrage based on increasingly irrelevant regulatory classifications of services, providers, and users, thus fulfilling the Communications Act's goal of promoting a competitive and deregulated telecommunications market.

A. The Commission Should Adopt a Unified Intercarrier Compensation Regime that Applies Cost-Based Pricing Principles to All Telecommunications Services Without Regard to Customer or Content

The *Notice* correctly identifies carrier compensation as an important issue affected by the deployment of IP-enabled services.[18] The rapid adoption of IP-enabled applications, most particularly VoIP, has accelerated the need for the Commission to address long-standing inefficiencies and distortions caused by the current intercarrier compensation system, particularly with respect to interstate access charges.

Since the Commission first initiated its *Intercarrier Compensation Rulemaking*,[19] Ad Hoc has urged the Commission to develop a unified intercarrier compensation

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[18] *NPRM* at ¶¶ 61-62.

[19] *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) ("*Intercarrier Compensation Rulemaking*").

regime that applies cost-based pricing principles to the regulated rates for all forms of telecommunications traffic.[20] In particular, Ad Hoc advocates the adoption of a bill-and-keep regime for intercarrier compensation only if it applies comprehensively to *all* categories of service and service provider – interexchange carriers ("IXCs") and local exchange carriers ("LECs"), exchange access and reciprocal compensation, urban and rural areas, packet and circuit-switched networks, wireline and wireless.[21] If the Commission fails to adopt such a unitary intercarrier compensation regime and thereby eliminate the distortion in regulated prices relative to actual network costs, providers of IP-enabled services such as VoIP can hardly be faulted if, like any provider of a new service built around technological advances, they exploit opportunities for arbitrage between services with identical costs and vastly different prices, *e.g.*, reciprocal compensation prices for competitive LECs ("CLECS") based on TELRIC[22] and exchange access prices for IXCs inflated by embedded historical costs.

The possibility that end user migration to IP-enabled information services may shrink the revenue stream generated by traditional telecommunications merely lends additional urgency to the task facing the FCC in the *Intercarrier Compensation Rulemaking*, namely, re-visiting current carrier compensation regimes and bringing them into closer conformity with uniform, cost-based pricing principles. As Ad Hoc has

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20 *See* Comments of the Ad Hoc Telecommunications Committee, on *Notice of Proposed Rulemaking,* CC Docket 01-92 (filed Aug. 21, 2001) ("Ad Hoc Intercarrier Compensation Comments"); Reply Comments of the Ad Hoc Telecommunications Committee, on *Notice of Proposed Rulemaking,* CC Docket 01-92 (filed Nov. 5, 2001).

21 Ad Hoc Intercarrier Compensation Comments at 8-9.

22 "TELRIC" refers to the Commission's Total Element Long Run Incremental Cost standard for the transport and termination rates paid by incumbent and competitive local exchange carriers. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket No. 96-98, 11 FCC Rcd 15,499, 15,845-46 at ¶ 678 (1996).

previously argued, the Commission should apply a forward-looking, long-run incremental cost standard to access charges because, in the absence of widespread, price-constraining competition, that standard is the best means of replicating the economic benefits that competition would otherwise produce.[23]

While the persistence of excessive and non-cost-based access charges may have perhaps been tolerable in the past (insofar as it was intended to achieve certain "public interest" goals for the pricing of local exchange service), the competitive pressure now placed on traditional telecommunications services as a result of VoIP and Bell Operating Company ("BOC") entry into the interexchange market makes above-cost access charges inimical to competition and a source of serious distortions in both the technology and choice of provider made by users. Cost-based end user prices for exchange and exchange access service in conjunction with "bill and keep" would solve most of these economic inefficiencies.

The *NPRM* reiterated the Commission's policy of subjecting service providers who send traffic to the public switched network to "similar compensation obligations, irrespective of whether the traffic originates on the [public switched network], on an IP network, or on a cable network."[24] But the Commission's current carrier compensation regimes are not consistent with that policy; different compensation mechanisms, with varying relationships to cost, currently apply to carrier exchanges of different types of traffic (local exchange, wireless, and exchange access traffic), all of which use the

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[23] *See* Comments of the Ad Hoc Telecommunications User Committee, on Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry in *Access Charge Reform*, CC Docket No. 96-262 (filed Jan. 29, 1997) at 35-38.

[24] *NPRM* at ¶ 61.

PSTN in almost the same manner. Until those differences are eliminated through comprehensive reform of all compensation mechanisms, any Commission effort to single out IP-enabled services for heightened regulatory scrutiny would be arbitrary and discriminatory.

Until a comprehensive, unified cost-based intercarrier compensation regime, applicable to all services, is adopted by the Commission, inconsistencies, inequities, and inefficiencies will continue to plague the intercarrier compensation system. The Commission should not, therefore, impose charges on any IP-enabled services that are not otherwise found to be "telecommunications services," unless and until such a new system for intercarrier compensation is adopted.

B. Universal Service Funding Mechanisms Will Not Be Threatened by Demand Migration to IP-Enabled Services if the Commission Adopts a Numbers-Based Contribution Assessment Methodology

The *Notice* requests information regarding the likely impact of IP-enabled services on universal service funding mechanisms.[25] In particular, the *Notice* raises concerns about how the regulatory classification of IP-enabled services would affect the FCC's ability to fund universal service.[26]

The problems associated with the current USF funding mechanism, which relies almost exclusively on a contribution factor applied to revenues from services classified as interstate and international "telecommunications," are already being addressed by

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25 *Id.* at ¶¶ 63-66.

26 *Id.* at ¶ 63.

the Commission in the *USF Contribution Methodology Rulemaking*.[27] Dramatic changes in the markets for existing services have already reduced significantly the revenues clearly attributable to interstate and international telecommunications.[28] Given these existing marketplace trends, the potential impact of IP-enabled services, particularly VoIP, is to accelerate the revenue shrinkage that is already plaguing the current USF funding mechanism and already being addressed by the Commission in the *USF Contribution Methodology Rulemaking.*

The key question posed by the *Notice* is whether the advent of IP-enabled services tips the analytical scales in favor of any specific reforms to universal service currently under consideration by the Commission[29] in the *USF Contribution Methodology Rulemaking*.[30]

Ad Hoc believes that the rise in demand for IP-enabled services makes it even more imperative that the Commission adopt the numbers-based methodology proposed by Ad Hoc in the USF rulemaking. Ad Hoc's proposal would not only ensure that users of IP-enabled services contribute their fair share to USF but would also ensure the continued viability of USF by spreading the contribution burden broadly, to nearly *all* users of telecommunications services, without regard to differences in the content, applications, or information technologies they may obtain or provide via such

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27 *Federal-State Joint Board on Universal Service*, *et al.,* CC Docket No. 96-45 *et al.,* Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002).

28 These changes include, for example, the bundling of local and long distance services into a single offering with one non-usage-sensitive price, rapid demand migration to wireless services, and substitution of Internet services (*e.g.,* email attachments) for traditional telecommunications services (*e.g.,* fax transmissions).

29 *Id.* at ¶ 64.

30 *See* note 27, *supra*.

telecommunications.[31] Indeed, a numbers-based collection methodology is wholly indifferent to the type or nature of telecommunications service a customer or provider uses (whether wireless or wireline, copper or fiber, broadband or dial-up, circuit-switched or packet-switched) and treats all network users (including VoIP customers) equally and in a non-discriminatory fashion. Most importantly, a numbers-based methodology would eliminate uneconomic incentives for a carrier or end-user to use or deploy a particular service simply because it is not subject to USF contribution obligations.

The proposal for a numbers-based methodology supported by Ad Hoc is simple and straightforward. Providers of telecommunications services that require North American Numbering Plan ("NANP") numbers would pay USF assessments based on assigned[32] numbers, and providers of special access and private lines would be assessed based on the capacity of the end-user connection.[33] Each provider's per number contribution obligation would be calculated as follows: the total universal service funding requirements divided by the total assigned "numbers" multiplied by the respective assigned "numbers" associated with each provider's end-user service customers. Total assigned "numbers" would be equal to all NANP numbers assigned to end-users plus the number of capacity-based units derived from special access connections. The count of NANP numbers would include single line numbers, toll free

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[31] Comments of the Ad Hoc Telecommunications User Committee on *Federal-State Joint Board on Universal Service,* Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket 96-45 (filed Feb. 28, 2003) ("Ad Hoc USF Comments").

[32] "Assigned numbers" are defined as "numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end-users or customers for their use …." 47 C.F.R. § 52.15(f)(1)(iii).

[33] For the specific details regarding the methods for allocating numbers to high capacity lines such as special access and private lines, *see* Ad Hoc USF Comments at 4.

numbers, 900 and 500 numbers, wireless numbers, and numbers associated with MLTS's (including DID numbers, assigned but spare numbers, and Centrex numbers). Mixed use private lines (*i.e.*, private lines used for both switched voice and data, such as channelized DS3) would be assessed based both on the number of assigned telephone numbers associated with that connection *and* the capacity of the connection. Numbers associated with Lifeline and Link-Up discounts would not be within the pool of numbers subject to the USF assessment.

Beyond methodology and implementation issues, a numbers-based assessment scheme is consistent with the legal requirements of Section 254 of the Act to ensure universal service. First, consistent with Section 254(b)(5), a numbers-based scheme is specific, predictable, and sufficient because every wireless and wireline connection to the public network requires a ten-digit number from the North American Numbering Plan. A number assignment is required regardless of whether the customer subscribes to intrastate or interstate services and regardless of whether the customer uses its connection solely for telecommunications services or for a mix of telecommunications services and information services. Thus, the number of assigned telephone numbers—which reflects subscribership—is more stable than carrier revenue, which fluctuates with business conditions and carriers' marketing practices.

Second, consistent with Section 254(d) of the Communications Act, a numbers-based assessment scheme provides for "specific, predictable, and sufficient" universal service support by imposing "equitable and nondiscriminatory" contribution obligations on "every telecommunications carrier that provides telecommunications services,"

except to the extent that such a provider's contribution would be *de minimis*.[34] LECs and CMRS providers would contribute to the universal service fund based on the telephone numbers used by their customers, and long distance carriers would contribute based on the toll free (800, 888, 877, 866) 900, and 500 numbers used by their customers.

By focusing the USF contribution assessment on subscribers' basic telecommunications connections and the transmission facilities used to provide that connection, the numbers-based assessment scheme can easily accommodate the proliferation of IP-enabled services and applications, for two reasons. First, it frees the USF funding mechanism from the vagaries of revenue level changes, which can rise and fall unpredictably as new technologies stimulate demand shifts to new services (*e.g.*, from fax transmissions over USF-contributing telecommunications services to email attachments over non-contributing Internet access services). Second, the numbers-based assessment scheme makes the application or content running over a telecommunications connection irrelevant to the assessment of a contribution. Whether a subscriber uses analog voice or VoIP for her interstate toll service, the subscriber will pay her fair share of universal service.

The increasing demand for IP-enabled services provides the Commission with an opportunity to address the increasingly visible flaws in the USF funding mechanism, and a reason to do so as quickly as possible. By moving toward a numbers-based collection methodology as proposed by Ad Hoc in the USF rulemaking, the Commission would ensure that: (i) the USF remains viable by establishing a specific, predictable, and

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[34] 47 U.S.C. § 254(d).

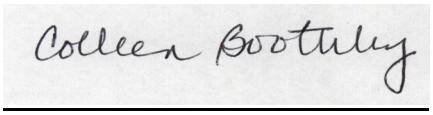
sufficient subscriber base against which USF assessments would be made; (ii) all end-users using the North American Numbering Plan, regardless of the application or service they use, including emerging technologies such as VoIP, contribute to the USF; (iii) fair and equitable contribution assessments are not hampered by limits on the Commission's jurisdiction; and (iv) no class of users disproportionately supports the USF.

IV. CONCLUSION

The advent of IP-enabled services does not require a complete overhaul of existing Commission regulations. But, like any other service or application that is dependent upon basic telecommunications infrastructure, IP-enabled services do require the Commission's rules to accurately reflect the competitive realities of the marketplace, which include the absence of sufficient competition to discipline pricing and carrier practices in the exchange and exchange access markets. Accordingly, the Commission should clarify that an IP-enabled application deployed over a private enterprise network is not subject to (nor does it subject the end-user of the service to) the jurisdiction of the Commission. The Commission should preserve the criteria set forth in existing Commission precedent regarding the regulatory classification of "information services" and "telecommunications" because that precedent provides valuable predictability and stability for end-users and providers making decisions about the deployment of network services. Finally, the Commission should seize the opportunity presented by the proliferation of IP-enabled services to address the

increasingly fundamental shortcomings in the current intercarrier compensation and USF funding regimes.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Michaeleen I. Terrana, hereby certify that true and correct copies of the preceding Comments of Ad Hoc Telecommunications Users Committee were served this 28th day of May, 2004 via the FCC's ECFS system, and by electronic mail upon the following:

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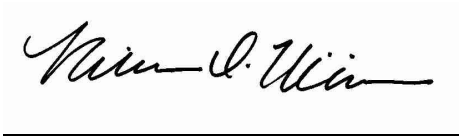

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